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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/682,522 | 10/08/2003 | Steven Allen Hellmann | 18830 | 2945 |

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KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

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| EXAMINER |
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DURAND, PAUL R

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| ART UNIT | PAPER NUMBER |
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3721

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|-------------------------------|---|--|
| Office Action Summary | Application No. 10/682,522 | Applicant(s) HELLMANN ET AL. ED | |
| | Examiner Paul Durand | Art Unit 3721 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-17 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 and 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 8, 10-13, 17 and 19-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 4-6 and 14-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/17/2004.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the end articles, which are not numbered, the process of identifying the last article or pair of ends of articles and the detecting of the datum surfaces must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 26, the examiner cannot ascertain the scope of the claim, since it is not clear from the specification or the drawings what the end article of the set are. Is it the end items of a single group, or is it the end article of the combined package?

In regard to claim 27, it is not clear to the examiner from the specification or the drawings how the pair of end articles are identified during the accumulation process.

In regard to claim 28, it is not clear to the examiner from the specification or the drawings how the datum is identified during the accumulation process.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 11-13 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clay (US 6,658,813) in view of Olson et al (US 5,771,658) and in further view of Shirodera (US RE37,405).

In regard to claims 1, 2, 11 and 12, Clay discloses the invention substantially as claimed including a delivery device 104 which conveys articles 14, a first transport means 50 which transports a second article 12 to a packing location (no number given, but generally in the location of half full box in Fig. 2) and an assembly mechanism in the form of packing area 60 and wrap machine 115 which combines and wraps the articles (see Figs. 1-5, C2, L16-29 and C3, L36 – C5, L45). What Clay does not specifically disclose is the use of an accumulation area, with a metering drum to stage the second articles prior to packaging. However, Olson teaches that it is old and well known in the art of packaging to provide an accumulation area in the form of a stacked article

assembly 35, for the purpose of accumulating the articles 42, arranged into groups 23, prior to placement into a package 25 (see Figs. 4,5 and C4, L1-43). Furthermore, Shirodera teaches that it is old and well known in the art of accumulating articles to provide a metering drum 10, which provides an outgoing conveyor 30 with articles 2 for the purpose of ensuring a steady supply of articles for a manufacturing process. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Clay with the accumulating means as taught by Olson and the drum means as taught by Shirodera, for the purpose of accumulating and supplying the articles prior to placement into a package 25.

In regard to claims 3 and 13, Clay discloses the invention substantially as claimed including a first type of article 14, which is can be comprised of a food container, a first transfer device in the form of conveyor 50, and a package system in the form of packing area 60, which combines the articles (see Figs. 1-5, C2,L16-29 and C3,L36 – C5,L45). What Clay does not disclose is the specific use of a packaging machine to pack the first articles. However, the examiner takes Official Notice that it is old and well known in the art of food packaging to provide a machine which packages the food items prior to final packaging for the purpose of reducing damage to product. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Clay with a packaging machine for both articles prior to combining for the purpose of reducing damage to product.

In regard to claims 21-25, Shirodera further teaches that it is old and well known in the art to provide a stationary plate 52 adjacent and downstream from the drum, lugs in the form of 13 radial plates, arranged at an end of the drum which engages items 2, with an exit ramp positioned at one end of the drum (see Figs. 1 and 2). Furthermore, regarding claim 24, while Shirodera does not specifically disclose the lug size approximate the article size, the examiner takes Official Notice that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a lug size approximate the article size for the purpose of ensuring that only one article conveyed on each lug. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Clay with the lug means as taught by Shirodera for the purpose of conveying an article.

8. Claims 7,8,10,17,19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clay, Olson and Shirodera in view of Jones (US 3,311,216).

In regard to claims 7,8,17 and 20, the modified invention of Clay discloses the invention substantially as claimed as applied to claim 1 above except for an accumulation mechanism, which orients the articles. However, Jones teaches that it is old and well known in the art of packaging to provide an accumulation device in the form of row means 16 and alignment means 22, which accumulates and aligns product "E" from an input source for the purpose of ensuring correct alignment prior to packaging (see Figs. 1,2 and C1,L70 – C2,L10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the

modified invention of Clay with the accumulating and alignment means as taught by Jones for the purpose of ensuring correct alignment prior to packaging.

In regard to claims 10 and 19, the modified invention of Clay discloses the invention substantially as claimed as applied to claim 1 above except for a transfer mechanism comprised of a rotating drum or drop slide. It would have been an obvious matter of design choice to provide a transfer mechanism comprised of a rotating drum or drop slide, since applicant has not disclosed that a transfer mechanism comprised of a rotating drum or drop slide solves any stated problem or is for any particular purpose and it appears the invention would do equally well with a conventional conveyor.

Allowable Subject Matter

9. Claims 26-28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 1/12/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

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references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner asserts that there is sufficient motivation to combine the references of Clay and Olson to show applicant that it is old and well known to convey and stack an article prior to packing.

Further, applicants arguments regarding the new limitations amended into the claims are moot in view of the newly applied reference of Shirodera.

Lastly, applicant's independent claims are broad in scope, allowing the claims to read on most accumulating, stacking and packing operations. Applicant is advised to consider placing some further limitations into the dependant claims to further define the invention.

Therefore, for the reasons indicated above, the rejection is deemed proper.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
March 9, 2005



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700